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1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte KRAIG A. KIRSCHNER
11

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13 Appeal 2009-005744
14 Application 10/668,116
15 Technology Center 3600
16

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18 Oral Hearing Held: December 3, 2009
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21 Before JENNIFER D. BAHR, STEFAN STAICOVICI, and FRED A.
22 SILVERBERG, *Administrative Patent Judges*.
23

24
25 ON BEHALF OF THE APPELLANT:
26

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34 The above-entitled matter came on for hearing on Thursday, December 3,
35 2009, commencing at 9:23 a.m., at the U.S. Patent and Trademark Office,
36 600 Dulany Street, Alexandria, Virginia, before Jan Jablonsky, Notary
37 Public.

PROCEEDINGS

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3 JUDGE BAHR: Good morning, Mr. McConaghy.

4 MR. MCCONAGHY: Good morning -- get my stuff out here.

5 JUDGE BAHR: This is docket number 2009-005744, and it's a riser
6 assembly, pipe clamp, basically, right? Not exactly, right?

7 MR. MCCONAGHY: Wait a minute, wait a minute.

8 Well, thank you. I would like to first just discuss the invention a bit in
9 view of the prior art. The problem is that I've got this client that is in the
10 sprinkler -- building sprinkler business, and sometime back they have
11 approved the use of plastics in certain applications, CPVC. And CPVC's
12 been a problem, because it isn't a pipe of the metal ilk, and so they have
13 distortions, they have creep, breaks, et cetera. And the inventor figured out
14 what to do about this, and it was to create a uniform compression around the
15 pipe, which then was within the parameters of the physics of the materials
16 and whatnot and would then be appropriate.

17 So we have -- in our Claim 8 we have a recitation of the
18 hemicylindrical section. The -- it defines a diameter. It's smaller than the
19 pipe. The fitting is smaller than the pipe, and it has this less than 5 percent.
20 Also, the straight sections are in juxtaposition. So we have defined a very
21 specific device.

22 First, to just comment on Figure 1, which is a pipe clamp, basically.

23 JUDGE SILVERBERG: Excuse me.

24 MR. MCCONAGHY: Yes.

25 JUDGE SILVERBERG: Could you enlighten us what is
26 hemicylindrical and what that means?

1 MR. MCCONAGHY: Half of a cylinder.

2 JUDGE SILVERBERG: What's the difference between that and
3 semicylindrical?

4 MR. MCCONAGHY: Semicylindrical is it's not -- it doesn't -- it's not
5 half. It doesn't have to be half. Semi, I mean, is probably a more general
6 term, but it's not -- hemicylindrical, it's like hemisphere, et cetera. And
7 it's -- and we define it that way in the specification, paragraph 19, and also
8 paragraph 16.

9 The pipe clamp is something that you put around a pipe, and you
10 crank it down till you feel like you've put enough compression on that pipe,
11 and that pipe clamp is never intended to fully come together with the straight
12 portions, mating in juxtaposition on either side. That's the big problem, and
13 that has been the big problem, and it's a big problem in terms of longevity of
14 the system, of the pipe itself, when it's a PV -- or a CPVC, because you're
15 getting distortions. You're not getting this compression that the inventor has
16 come up with that is uniform about the pipe.

17 So what have they done? By having the diameter of this
18 hemicylindrical section being smaller than the pipe, but no more than 5
19 percent, and then drawing it down to where it is intended to be fully clamped
20 with the pieces together, the -- clamping straight sections together, it takes
21 the discretion on how hard to crank this thing down. It takes -- it creates this
22 uniform compression about the pipe.

23 So it looks a lot like a pipe clamp, but it's very specifically not a pipe
24 clamp, and those very -- those specifics are in the claim, as I mentioned.

25 So what does Brown teach us? I don't know what Brown teaches us.
26 There's no real information in there, but you look at the drawing and it looks

1 like a pipe clamp. Actually the drawing looks like the draftsman understood
2 a pipe clamp, but didn't understand how one works, so he cranked it down to
3 where the two sides are brought together. But I -- it just --

4 JUDGE BAHR: Do you think that was a misunderstanding on the
5 draftsman's part, or do you think it was an intentional showing of exactly
6 what your -- you cited here in the claim.

7 MR. MCCONAGHY: I don't think it matters. I don't think it matters
8 what Brown shows, but that's -- happens to be my view of it.

9 JUDGE BAHR: It doesn't matter what Brown shows?

10 MR. MCCONAGHY: No, because Brown and Rahe together don't
11 create the device. And Brown doesn't talk anything about -- and the
12 Examiner admits that the constriction is not in there, in Brown. So
13 I'm -- you know, we can talk about Brown, but I don't know what Brown
14 stands for. But Rahe is a clamp which is more like the pipe clamp. It
15 clamps in one direction. It happens to be for a completely different type of
16 device, et cetera, which I think excludes it from appropriate association with
17 Brown, but it just doesn't do it. It clamps in one direction. It doesn't create
18 this uniform constriction around the pipe, which is -- the invention is
19 specifically set up to do and the claims specifically call for in those
20 elements.

21 And maybe I should be a little clearer about that, but there is -- they
22 cut out a piece so it isn't hemicylindrical and then they crank it down with a
23 fastener, and that cranks it down in one direction, so you're not
24 getting -- you're able to set it in there so that you can then constrict it in
25 there, and you crank it down. So that, to me, is effectively a pipe clamp.

1 So I think there's two principal failings in the rejection. The
2 references don't make the invention --, specifically, as I just mentioned,
3 Rahe doesn't generate the constriction. They have a range of tolerance or
4 interference fit if you tighten the fastener all the way down, but that, again,
5 as I'm saying, is not -- does not create this uniform constriction.

6 JUDGE SILVERBERG: Is that in the claim, sir? May I ask if that's
7 in the claim?

8 MR. MCCONAGHY: Yeah, that's --

9 JUDGE SILVERBERG: The words of "uniform constriction going
10 around the" --

11 MR. MCCONAGHY: No, absolutely. I'm unfortunately an old
12 patent attorney, and functional language used to be frowned upon. But I
13 have the hemicylindrical section. It defines a diameter, and the diameter is
14 in a range which is smaller than the pipe and no greater than 5 percent, and
15 the straight sections are brought together in juxtaposition. So I define the
16 physics of it, the physical structure of -- and that's what's missing out of
17 Rahe.

18 So the Examiner gave a conclusory statement about the invention
19 which I think is in opposition to *KSR* by just ignoring the arguments about
20 the Rahe device. I see a very distinct difference, which has resulted in -- and
21 my client has found that this is a far better device for taking a pipe which is
22 vertically oriented full of water so it needs a lot of holding, and for a plastic
23 pipe, and for finding that they can make this work, that they then can install
24 it. It doesn't break. It doesn't ultimately creep to the point of destruction,
25 and it is a specific structure which creates this constriction that the Examiner
26 has not found, in the combination or otherwise.

1 JUDGE SILVERBERG: Is there anything else you'd like to add?

2 MR. MCCONAGHY: No.

3 JUDGE STAICOVICI: I have a question.

4 MR. MCCONAGHY: Yes.

5 JUDGE STAICOVICI: It goes back to -- I understand Brown is the
6 primary reference.

7 MR. MCCONAGHY: Correct.

8 JUDGE STAICOVICI: And the Examiner finds that Brown teaches a
9 hemicylindrical --

10 MR. MCCONAGHY: No.

11 JUDGE STAICOVICI: And do you know if -- does so --

12 MR. MCCONAGHY: No, he says substantially. And then he admits
13 that it doesn't have the properties that he tries to add Rahe for, but he just
14 says it's like it's substantially, and substantially doesn't cut it. Yes, it looks a
15 lot like it, I agree.

16 JUDGE STAICOVICI: But hemicylindrical would have to be a
17 hundred percent of half of a cylinder, correct?

18 MR. MCCONAGHY: Yes.

19 JUDGE STAICOVICI: Didn't your invention have a certain radius at
20 the edges?

21 MR. MCCONAGHY: Yes, paragraph 16 talked about that.

22 JUDGE STAICOVICI: So that's also substantially hemicylindrical,
23 then -- you would have those radiuses -- not --

24 MR. MCCONAGHY: Well, I defined -- it's true. I defined
25 substantially in the application in paragraph 16 as to having -- there's another

1 change too. It has the little relief at the edges, at the -- on the ends there's a
2 bit of relief, shown in Figure 3.

3 JUDGE STAICOVICI: Right.

4 MR. MCCONAGHY: And it also -- I mentioned it has -- because
5 you've got to make the thing. It's got a bit of a bend at the intersection
6 between the hemicylindrical section and the straight sections. But if you
7 draw a line across the straight sections, you have a hemicylindrical shape
8 with a diameter defined. And he's talking about something that is
9 substantially, because it's like a pipe clamp.

10 JUDGE BAHR: Or does the Examiner mean substantially in the same
11 way you've used the word "substantially," that it has that little radius at that
12 junction from where it becomes cylindrical in shape to the flat face?

13 MR. MCCONAGHY: I propose to you that he does not mean that,
14 never pointed it out. He was talking about --

15 JUDGE BAHR: Because your claims at one point had substantially
16 hemicylindrical.

17 MR. MCCONAGHY: It did, absolutely. And I defined that -- what I
18 meant by "substantially," and he didn't accept that as a definition, and that
19 definition is different than what he's using, what the prior art has. So he's
20 glossing over "substantially." He's not getting it from Brown, for sure, and
21 then Rahe is -- very specifically teaches against hemicylindrical. They
22 have -- and I put that in the Brief, a view of it in the Brief. They specifically
23 cut a piece out of that so that it isn't. And you know, they're telling you,
24 "Here's how you clamp this pipe," And you take a slice out of one side of it
25 and then crank it down together, so it's pushing in one direction. It's not
26 creating the constriction.

1 So I fully appreciate that this all looks very, very similar, but we were
2 motivated to file this thing because this is a substantial difference. The
3 difference is that you're getting this constriction, and the pipe, the pipe is
4 able to -- effectively the pipe is the one which is being uniformly strained in
5 a way that allows it to operate as distinguishing from the old pipe clamps,
6 where it's not the pipe that's strained, it's principally the pipe clamp that is
7 clamped down, and then as it's tightened it clamps -- it bends around the
8 rigid pipe.

9 JUDGE STAICOVICI: So basically the definition of hemicylindrical
10 includes this constriction giving a 5 percent difference in the diameters?

11 MR. MCCONAGHY: The hemicylindrical is -- defines a diameter,
12 and then that diameter is --

13 JUDGE STAICOVICI: So that's 5 percent difference?

14 MR. MCCONAGHY: Yeah. Then the diameter is defined in terms of
15 the range.

16 JUDGE STAICOVICI: Right.

17 MR. MCCONAGHY: Okay?

18 JUDGE BAHR: In paragraph 19 of your specification, the last two
19 sentences, there's a sentence that reads, "Such sections may include
20 additional plates or washers about the through holes as part of the straight
21 sections."

22 MR. MCCONAGHY: Mm-hmm.

23 JUDGE BAHR: Does that contemplate an embodiment where the flat
24 plates themselves are not, in fact, in contact with one another, but there is a
25 gap between them that is filled by either washers or plates?

26 MR. MCCONAGHY: Sure didn't in my mind.

1 JUDGE BAHR: What are you trying to say there, then?

2 MR. MCCONAGHY: That the -- I'm sorry.

3 JUDGE BAHR: It's on page 5 of the specification.

4 MR. MCCONAGHY: Yeah, I just -- if I could find the stupid
5 specification it would help. Well, I know what I was talking about. I was
6 trying to talk about there not being -- there being other possible fasteners and
7 ways of fastening things. Well, I'm -- I had this problems on the plane, too.
8 I don't know where the -- I ought to write longer specifications. Here we go.

9 Oh, by the way, "pump" is wrong in there, too, in the next to last
10 sentence. "Thus the riser clamp 12 as applied to a riser pipe will not crush
11 the branchable pipe." Is that it? "And further will not gouge the pipe at
12 sharp edge"?

13 JUDGE BAHR: Yes, the sentence right before that.

14 MR. MCCONAGHY: Oh, okay.

15 JUDGE BAHR: "This inclusion of additional plates or washers about
16 the through holes as part of the straight sections to define that diameter size
17 relationship" --

18 MR. MCCONAGHY: "Specific size relationship between the
19 inside" -- I would say that that would be the prospect of a more complicated
20 structure to achieve the same result, but it has to have that result, has to have
21 that ultimate -- the pipe has to see what amounts to that hemicylindrical
22 section, or it doesn't cause uniform constriction.

23 JUDGE BAHR: Somehow these additional plates or washers help
24 define this specific size relationship, which if they were on the outside of the
25 plates --

26 MR. MCCONAGHY: Yeah, they would be part of the --

1 JUDGE BAHR: -- opposite the straight sections --

2 MR. MCCONAGHY: Yeah.

3 JUDGE BAHR: -- it appears they would not define that relationship.

4 They would have to be --

5 MR. MCCONAGHY: Yeah.

6 JUDGE BAHR: -- between those sections.

7 MR. MCCONAGHY: I think you're right. I think you're right. So
8 it's -- again, it's the focus on the definition or on the creation of that
9 relationship, that hemicylindrical relationship, where you have defined a
10 diameter, as it says in the claim, and that diameter has specific size range,
11 and it's not a pipe clamp, nor, you know, any of this is a pipe clamp. So
12 it's -- I agree, it's -- look at it, and the Examiner has said, "Well, it's
13 substantially semi -- hemicylindrical." Okay, yeah, it looks like that. But
14 it's creating a result in the pipe, in this plastic pipe, which is different than
15 the way pipe clamps work, and distinctly compresses this plastic pipe, where
16 pipe clamps are -- have always assumed a rigid structure, and that they're
17 pulled around, they're tightened around to the point they then hold simply
18 through that compression. And again, that compression is principally, just
19 like the Rahe device, it's principally two directions or one direction, a
20 compression through the tension on the bolts on either side of it.

21 JUDGE BAHR: I think we understand your position. I don't have
22 any other questions.

23 MR. MCCONAGHY: Thank you very much.

24 (Whereupon, at 9:45 a.m., the proceedings were concluded.)